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Testimony submitted to the House Standing Committee on Appropriations  
Regarding Procedures for Parole of Medically Frail Prisoners

As the State Long Term Care Ombudsman, I am charged under the federal Older Americans Act and the Older Michiganians Act with advocating on behalf of residents of licensed long term care facilities and helping to develop and monitor federal, state, and local laws, regulations and policies. In this capacity, I often evaluate policy and legislative proposals for their potential benefits or detriments to residents. I greatly appreciate the opportunity to present the following testimony regarding HB 4101-4103.

The State Long Term Care Ombudsman opposes this bill package for the following reasons:

- The proposed legislation will be nearly impossible to enforce. If a long term care facility is certified for Medicare and/or Medicaid (about 98% of all nursing facilities in Michigan), the entire facility is subject to the federal nursing home regulations. Federal regulations include clearly defined resident rights to freedom of movement and privacy, including the ability to move freely in and out of the nursing home.<sup>1</sup> In contrast, HB 4101 requires long term care facilities to police and restrict the movement of parolee residents if such a restriction is a condition of his/her parole. Restricting the movement of residents is in direct conflict with federally-guaranteed resident rights, and would therefore create compliance issues which could result in enforcement remedies for the facility.<sup>2</sup> A nursing home would not be able to both comply with federal nursing home regulations and HB 4101-4103.<sup>3</sup>
- HB 4101 does not offer adequate, if any, protections to ensure the health and safety of existing residents. While not all paroled residents will pose a threat, many may still be

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<sup>1</sup> "The resident has a right to interact with members of the community and participate in community activities both inside and outside the facility." 42 C.F.R. § 483.10(f)(3). See also Medicaid Provider Manual: Nursing facility Coverages § 11.2.B, at 70-72 (Residents rights and rules regarding therapeutic leave days outside of the facility).

<sup>2</sup> "Justice involved individuals are entitled to the same rights described in 42 CFR Part 483, Subpart B as all other residents residing in the facility. The facility shall not establish policies or impose conditions on the justice involved resident that result in restrictions which violate the resident's rights." CMS State Operations Manual Appendix PP, at 7-8.

<sup>3</sup> It should also be noted that HB 4101's expansive definition of "Medical Facility" allows parolees to be placed in a wide-range of residential settings, not just nursing homes. Possible alternate settings include Homes for the Aged (HFA) and Adult Foster Care facilities (AFC). Placing parolees in these additional settings raises the same resident rights concerns as nursing home placements.

capable of causing significant harm to other residents.<sup>4</sup> Under HB 4101, potential paroled residents with long histories of violent crime will be introduced into general nursing home populations without any Department of Corrections (DOC) guidance to facilitate their adjustment. The potential risks for serious, even fatal, harm to very vulnerable and frail facility residents outweigh any possible cost savings for the State from integrating these prisoners into the general nursing home populations.<sup>5</sup>

- HB 4103 unreasonably imposes criminal penalties on long term care facility staff for actions that are largely innocent and otherwise non-punishable. HB 4103 makes it a crime to assist a parolee to leave or attempt to leave a long term care facility if leaving violates a condition of the resident's parole. This new obligation on facilities to actively police against the escape or attempted escape of paroled residents unreasonably burdens an already overworked staff. HB 4103 essentially requires nursing home staff to assume law enforcement duties to ensure a certain class of residents receives restrictive and unequal treatment because of their parolee status. This practice has been specifically rejected by the federal administrative agency, the Centers for Medicare & Medicaid Services (CMS), which oversees the regulation of the country's long-term care facilities. In a May 03, 2016 Memorandum to nursing home surveyors, CMS stated that facilities:

*cannot serve as an agent of the pertinent law enforcement or criminal justice supervisory authority by enforcing supervisory conditions or reporting violations of those conditions to officials. Additionally, there can be no integration of the criminal justice supervisory function into the essential operations or physical environment of the nursing home....*

See CMS Center for Clinical Standards and Quality/Survey & Certification Group; Guidance to Surveyors on Federal Requirements for Providing Services to Justice Involved Individuals, S&C: 16-21- ALL, 5/3/16, at 6.

The requirements and penalties of HB 4101 and 4103 effectively and unreasonably convert long term care facilities to quasi-prisons for a certain class of medically frail parolees in direct conflict with clear federal guidance.

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<sup>4</sup> HB 4102 makes it clear that every type of prisoner can be eligible for special medical parole, including prisoners serving life sentences.

<sup>5</sup> The Legislative Analysis for HB 4101-4103 predicts a relatively modest annual savings of \$500,000 based on the release of about 120 prisoners currently deemed eligible for medical release by DOC. See Legislative Analysis, House Fiscal Agency, HB 4101-4103 at 4. This projected savings could be even lower as these prisoners have yet to be screened for risk and/or placement. *Id.*

- The practical consequence of HB 4101-4103 would be particularly unfortunate. As long term care facilities are free to choose which residents they accept, it is not hard to imagine that only the most underpopulated and lower quality facilities would be willing to accept this challenging population. Higher-quality facilities would understandably be hesitant to house parolees for fear of damaging their reputation as safe and secure environments. These market forces would foreseeably relegate parolees to lower-quality facilities with the least capacity to provide the complex services they desperately need.
- HB 4101's definition of "Medical Facility" is particularly broad allowing medically frail parolees to relocate to any "housing accommodation providing medical treatment suitable to the condition or conditions rendering the prisoner medically frail." It is not inconceivable that the proposed legislation could create a number of new "halfway" houses sheltering medical parolees outside the purview of any regulatory authority and/or without community approval and buy-in.

I thank you for the opportunity to share feedback on the proposed legislation.

Respectfully submitted February 28, 2018



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